APPENDIX C

Remittitur

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 30, 1967, became the final judgment of this court in the above entitled case on January 2, 1968. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Three Hundred Twenty-eight and 18/100 Dollars ($328.18) in favor of respondent and against appellant and its surety, Fidelity and Deposit Company of Maryland.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 2nd day of January, A.D. 1968.

WILLIAM M. LOWRY
Clerk of the Supreme Court,
State of Washington

APPENDIX

APPENDIX D

Constitutional Provisions, Statutes and Regulations

United States Constitution, Art 1, §8, cl. 3:

"The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

United States Statutes:

19 Stat. 200 (1876), 31 Stat. 1066 (1901), 32 Stat. 1009 (1903), 22 Stat. 179 (1882), R.S. §2132, 25 U.S.C. §§261-264:

§261

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. Aug. 15, 1876, c. 289, §5, 19 Stat. 200.

§262

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. Mar. 3, 1901, c. 832, §1, 31 Stat. 1066; Mar. 3, 1903, c. 994, §10, 32 Stat. 1009.

§263

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian

tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. R.S. §2132.

§264

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided,* That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further,* That no white person, shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commission of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. R.S. 2133; July 31, 1882, c. 360, 22 Stat. 179.

Federal Regulations:

25 F.R. 10670-72 (1957); 30 F.R. 8267-8 (1965), 25 CFR §251 (1965):

§251.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§251.2 Presidential prohibition.

The President is authorized, whenever in his opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to any Indian tribe, and to direct that all licenses to trade with such tribe be revoked, and all applications therefor rejected. No trader shall, so long as such prohibition exists, trade with any Indians of or for said tribe. R.S. 2132; 25 U.S.C. 263.

§251.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided,* That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further,* That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs. R.S. 2133, as amended; 25 U.S.C. 264.

§251.5 Government employees not to trade with Indians except in certain cases.

Save as authorized by the act of June 19, 1939 (53 Stat. 840; 25 U.S.C. 68a, 87a, 441), no person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for and on account of the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office. Pending the promulgation of regulations prescribing in more detail the transactions authorized by the act of June

19, 1939, employees of the United States Government, including those in the Bureau of Indian Affairs, may be permitted to trade with Indians or Indian organizations under the conditions specified below:

(a) Employees of the United States Government, including those in the Bureau of Indian Affairs may, with the approval of the Secretary of the Interior in each case where the amount involved exceeds $100, or with the approval of the superintendent or other officer in charge, where the amount involved does not exceed $100, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service or commodity produced, rendered, owned, controlled or furnished by any Indian or Indian organization: *Provided,* That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee: *And provided further,* That employees in Alaska may in each case make such purchases with the approval of the Secretary of the Interior where the amount involved exceeds $250, and with the approval of the superintendent or other officer in charge where the amount involved does not exceed $250.

(b) *United States employees, Indian blood.* Indian employees of the United States Government of whatever degree of Indian blood, may be members in the same manner as other Indian members of the tribe not so employed and receive benefits by reason of their membership in such tribes in corporation or cooperative associations, organized by and operated for Indians. Such Indian government employees may engage in all lawful transactions with Indians, Indian tribes and such corporations or cooperative associations. None of the transactions authorized herein may be entered into by such employees for the purpose of engaging directly or indirectly in the selling, releasing, trading, bartering or passing on in any other

way for profit the objects, rights, services or property thus acquired. Nothing in this section shall prevent in proper cases the disposition of any such property when such transaction cannot be considered as actually engaging in any of the businesses prohibited in this section. All transactions authorized herein to be valid must be approved by the Secretary of the Interior.

(c) *Leases or sales restricted Indian land.* Leases or sales of trust or restricted Indian land to or from Indian employees of the United States Government must be made on sealed bids unless the Commissioner of Indian Affairs waives this requirement on the basis of a full report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that public bids are not feasible and could not be expected to bring a higher price than the proposed private transaction. An affidavit as follows shall accompany each proposed land transaction:

I, ----------, ----------
(Name) (Title)
swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (Grantor's, purchaser's, vendor's) consent to the instant transaction. 53 Stat. 840; 25 U.S.C. 68a, 87a, 441.

§251.6 Small purchases.

The purchase in small quantities for home use or consumption by Government employees or others, of blankets, baskets, etc., and articles of subsistence offered for sale by Indians, is held not to constitute trading with Indians within the meaning of section 2078 of the Revised Statutes. R.S. 2078; 25 U.S.C. 68.

§251.8 Regulating sale of arms and ammunition.

Arms and ammunition may not be sold to the Indians by traders except upon permission of the

superintendent, which will be granted only for clearly established lawful purposes.

§251.9 Application for license.

(a) Application for license must be made in writing on Form 5-052, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof; the place where it is proposed to carry on the trade; the capital to be invested; the names of the clerks to be employed; and the business experience of the applicant. The application must be forwarded through the Superintendent to the Commissioner of Indian Affairs, accompanied by two satisfactory testimonials on Form 2-077 as to the character of the applicant and his employees and their fitness to be in the Indian country, and by an affidavit of the Superintendent on Form 5-053 that neither he nor any person for him has any interest, direct or indirect, present or prospective, in the proposed business or the profits arising therefrom, and that no arrangement for any benefit to himself or to any other person on his behalf is contemplated in case the license is granted. Licensed traders will be held responsible for the conduct of their employees.

(b) Itinerant peddlers or purveyors of foodstuffs and other merchandise shall be considered as traders and shall obtain a license or permit from the Superintendent setting forth the class of trade or peddling to be carried on, furnishing such character or credit references, or both, as may be required by the Superintendent. The period of the license for such itinerant peddlers shall be determined by the Superintendant.

(c) When a license or permit to trade is issued under the regulations in this Part 251, a fee of $5.00, payable when the license is issued, shall be levied against the licensee. 30 F.R. 8267, June 29, 1965

§251.11 License period.

Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land, except that where the proposed licensee is the owner or beneficial owner or holds a use right to the land on which the business is to be conducted, the license period shall be fixed by the Commissioner of Indian Affairs or his authorized representative, but in no case shall the license period exceed 25 years. 30 F.R. 8268, June 29, 1965

§251.12 License renewal.

Application for renewal of license must be made to the Commissioner of Indian Affairs on Form 5-054, through the superintendent, at least 30 days prior to the expiration of the existing license, and the superintendent must report as to the record the applicant has made as a trader and his fitness to continue as such under a new license.

§251.13 Power to close unlicensed stores.

If persons carry on trade within a reservation with the Indians without a license, or continue to trade after expiration of the license without applying for renewal, the superintendent will immediately report the facts in the case to the Commissioner of Indian Affairs, who may, if necessary, direct the superintendent to close the stores of such traders.

§251.14 Trade limited to specified premises.

No trade with Indians is permitted at any other place than that specified in the license. Licenses do not cover branch stores. A separate license and bond must be furnished for each such store. The business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

§251.15 License applicable for trading only by original licensee.

No trader will be allowed to lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Commissioner of Indian Affairs. A license to trade with Indians does not confer upon the trader any right or privileges in respect to the herding or raising of livestock upon the reservation. The use of reservation lands whether tribal or allotted, for such purposes can be obtained by a trader only upon the terms and under the restrictions which apply to other persons. His license gives him no advantage over others in this respect.

§251.16 Trade in annuities or gratuities prohibited.

Traders are forbidden to buy, trade for, or have in their possession any annuity or other goods of any description which have been purchased or furnished by the Government for the use or welfare of the Indians. Livestock or their increase purchased by the Government and in possession or control of the Indians may not be purchased by any trader, not a member of the tribe to which the owners or possessors of the cattle belong, except with the written consent of the agent of said tribe.

§251.17 Tobacco sales to minors.

No trader shall sell tobacco, cigars, or cigarettes to any Indian under 18 years of age.

§251.18 Intoxicating liquors.

No trader shall use or permit to be used his premises for any unlawful conduct or purpose whatsoever. No trader shall use or permit to be used any part of his premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto. Violation of this section will subject the

trader to criminal prosecution, revocation of license and such other action as may be necessary.

§251.19 Drugs.

Traders shall not keep for sale, or sell, give away, or use any opium, chloral, cocaine, peyote or mescal bean, hashish or Indian hemp or marihuana, or any compound containing either ingredient, and for violation hereof the trader's license shall be revoked.

§251.21 Gambling.

Gambling, by dice, cards, or in any way whatever, is strictly prohibited in any licensed trader's store or on the premises.

§251.22 Inspection of traders' prices.

It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on reservations, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable.

§251.23 Credit at trader's risk.

Credit given Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges of personal property by Indians to obtain credit or loans.

§251.24 Cash payments only to Indians.

Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Pay-

ment must be made in money, or in credit if the Indian is indebted to the trader.

§251.25 Trade in antiquities prohibited.

Traders shall not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States.

§251.26 Infectious plants.

Traders shall not introduce into, sell, or spread within Indian reservations any plant, plant product, seed, or any type of vegetation, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the laws and regulations of the State for plant quarantine and pest control. For the purpose of enforcement of this provision State officers may enter Indian reservations, with the consent of the superintendent, to inspect the premises of such traders and otherwise to execute such State laws and regulations.

Revised Code of Washington:

§28.47.440

Additional tax on cigarettes imposed. In addition tion to the taxes levied by RCW 73.32.130 and 82.24.020, there is levied and shall be collected by the tax commissioner from the persons mentioned in and in the manner provided by chapter 82.24, as now or hereafter amended, an excise tax upon the sale, use, consumption, handling or distribution of cigarettes in an amount equal to the rate of one-half mill per cigarette, but the provisions of RCW 82. 24.070 allowing dealers' compensation of affixing stamps shall not apply to this additional tax. Instead, wholesalers and retailers subject to the provisions of chapter 82.24 shall be allowed as compensation for their services in affixing the stamps for the ad-

ditional tax required by this section a sum equal to one-half of one percent of the value of the stamps for such additional tax purchased or affixed by them. Wholesalers and retailers subject to the payment of this tax may, if they wish, absorb such additional tax and not pass it on to purchasers without being in violation of this or any other act relating to the sale or taxation of cigarettes.

Revenues derived from the tax imposed by this section shall be transmitted by the tax commission to the state treasurer in accordance with the provisions of RCW 82.32.320, to the credit of the public schools building bond redemption fund. The amount so deposited in the aforesaid fund shall be devoted exclusively to payment of interest on and to retirement of the bonds authorized by RCW 28.47.420.

As additional security for the payment of the bonds herein authorized, all revenues derived from the tax imposed by RCW 82.24.020 over and above the amount required by RCW 73.32.130 to be paid into and retained in the war veterans' compensation bond retirement fund shall be paid into the public schools building bond redemption fund and shall be devoted exclusively to the payment of interest on and to retirement of the bonds authorized by RCW 28.47.420: *Provided,* That whenever the receipts into the public schools building bond redemption fund from all sources during any one year exceed two million two hundred and fifty thousand dollars, all sums received above that amount shall be transferred by the state treasurer to the state general fund.

§73.32.130

Cigarette tax authorized for bond interest and retirement—Segregation, transfer of funds—Dealer's compensation. For the purpose of creating the fund for the retirement of such bonds upon maturity and the payment of interest thereon as it falls due, all proceeds hereafter received from the excise tax on cigarettes imposed by chapter 82.24 as now or here-

after amended, shall, so long as any part of principal or interest of the bonds herein provided for remains outstanding, be paid into the war veterans' compensation bond retirement fund hereinafter provided for.

In addition thereto, there is hereby levied and there shall be collected by the tax commission from the persons mentioned in and in the manner provided by chapter 82.24, as now or hereafter amended, an excise tax upon the sale, use, consumption, handling or distribution of cigarettes in an amount equal to the rate of one mill per cigarette, but the provissions of RCW 82.24.070 allowing dealers' compensation for affixing stamps shall not apply to this additional tax. Instead, wholesalers and retailers subject to the provisions of chapter 82.24 shall be allowed as compensation for their services in affixing the stamps for the additional tax required by this section a sum equal to one percent of the value of the stamps for such additional tax purchased or affixed by them.

All money derived from such tax shall be paid to the state treasurer and credited to a special trust fund to be known as the war veterans' compensation bond retirement fund, which shall be kept segregated from all money in the state treasury and shall, while any of the bonds herein authorized or any interest thereon remain unpaid, be available solely for the payment thereof.

Whenever the receipt into the war veterans' compensation bond retirement fund during any year exceed four million five hundred thousand dollars, all sums received above that amount shall be transferred by the state treasurer to the state general fund, and whenever there has accumlated in the war veterans' compensation bond retirement fund four million one hundred thousand dollars in excess of the amount required in any year, as determined by the state finance committee, to meet obligations during that year for bond retirement and interest, the state treasurer shall transfer from such fund to the general fund

all money in excess of such amount.

§82.24.010

Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only;

(2) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate;

(3) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state;

(4) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state;

(5) "Stamp" means the stamp or stamps or meter impressions by use of which the tax levy under this chapter is paid;

(6) The meaning attributed, in chapter 82.04, to the words "person," "sale," "business" and "successor" shall apply equally in the provisions of this chapter.

§82.24.020

Tax imposed—Rate

There is levied and there shall be collected as

hereinafter provided, a tax upon the sale, use consumption, handling or distribution of all cigarettes, in an amount equal to the rate of four mills per cigarette.

§82.24.030

Stamps to be affixed—Meter machines authorized. In order to enforce collection of the tax hereby levied, the tax commission shall design and have printed stamps of such size and denominations as may be determined by the commission, such stamps to be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the commission to readily ascertain by inspection, whether or not such tax has been paid. Every person shall cause to be affixed on every package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon before he sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: *Provided*, That where it is established to the satisfaction of the commission that it is impractical to affix such stamps to the smallest container or package, the commission may authorize the affixing of stamps of appropriate denomination to a large container or package.

The commission may authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this chapter, and if such use is authorized, shall provide reasonable rules and regulations with respect thereto.

§82.24.040

Duty of wholesaler. Every wholesaler in this state shall immediately, after receipt of any of the articles taxed herein cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: *Provided*, That any wholesaler engaged in interstate business, who fur-

nishes surety bond in the sum satisfactory to the commision, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Such interstate stock shall be kept separate and apart from stamped stock: *Provided further,* That every wholesaler shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state, make a true duplicate invoice of the same which shall show full and complete details of the interstate sale or delivery, and shall transmit such true duplicate invoice to the main office of the commission, at Olympia, not later than the fifteenth day of the following calendar month, and for failure to comply with the requirements of this proviso the commission may revoke the permission granted to the taxpayer to maintain an interstate stock of goods to which the stamps required by this chapter have not been affixed.

§82.24.050

Duty of retailer. Every retailer shall, except as to those articles on which the tax has been paid by the proper affixing of stamps by a wholesaler, as herein provided, affix the stamps for the denomination and amount necessary to represent the tax on each individual package or container, the same to be done, in all cases, immediately upon receipt by the retailer of the unstamped articles: *Provided,* That any retailer engaged in interstate business, who furnishes surety bond in a sum satisfactory to the commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Such interstate stock shall be kept separate and apart from stamped stock: *Provided further,* That every retailer shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state, make a true duplicate invoice of the same which shall show full

and complete details of the interstate sale or delivery, and shall transmit said true duplicate invoice to the main office of the commission, at Olympia, not later than the fifteenth day of the following calendar month, and for failure to comply with the requirements of this proviso the commission may revoke the permission granted to the taxpayer to maintain an interstate stock of goods to which the stamps required by this chapter have not been affixed.

§82.24.060

Stamps — How affixed. Stamps shall be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed.

In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps shall be affixed securely on each individual package.

§82.24.070

Compensation of dealers. Wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps herein required a sum equal to three and three-quarters percent of the value of the stamps purchased or affixed by them.

§82.24.080

Legislative intent. It is the intent and purpose of this chapter to levy a tax on all of the articles taxed herein, sold, used, consumed, handled, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles herein taxed is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed,

handled, or distributed in this state.

§82.24.090

Records to be preserved—Reports. Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records, showing all transactions had with reference to the purchase and sale of any of the articles taxed herein and such persons shall also keep separately all invoices, and shall keep a record of all stamps purchased, and all such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the tax commission or its duly authorized agent.

All wholesalers shall within fifteen days after the first day of each month file with the tax commission a report of all drop shipment sales made by them to retailers within this state during the preceding month, which report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof.

§82.24.100

Forgery or counterfeiting of stamps — Penalty. To forge or counterfeit any stamp of the kind herein provided is a felony.

§82.24.110

Other offenses — Penalty. Each of the following acts is a gross misdemeanor and punishable as such:

(1) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(2) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(3) For any person other than the tax commis-

sion or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(4) To violate any of the provisions of this chapter;

(5) To violate any lawful rule or regulation made and published by the tax commission;

(6) To use any stamps more than once;

(7) To refuse to allow the tax commission or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(8) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein; to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(9) For any person to make, use, or present or exhibit to the tax commission or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(10) For any wholesaler or retailer or his agents or empolyees to fail to produce on demand of the tax commission all invoices of all the articles herein taxed or stamps bought by him or received in his place of business within five years prior to such demand unless he can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his control;

(11) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of

unstamped cigarettes do so to avoid payment of the tax imposed herein.

All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses herein described shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer violating the provisions thereof.

§82.24.120

Violations — Penalties and interest. If any person, subject to the provisions of this chapter or any rules and regulations promulgated by the tax commission under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules and regulations promulgated by the tax commission in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a penalty equal to the amount of any tax found to be due plus interest thereon at the rate of one percent for each thirty days or portions thereof from the date the tax became due, and upon notice mailed to the last known address of the taxpayer said amount shall become due and payable in ten days, at which time the commission or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes and penalties. The commission, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of one percent for each thirty days or portion thereof. The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

§82.24.220

Vending machines — Certificates. Every person in this state who by means of a vending machine sells any of the articles taxed herein shall be required before engaging in such business to apply to and obtain from the tax commission a certificate to engage in business as a retailer, and shall obtain a separate certificate for each machine used in vending or selling any of the articles taxed herein and each machine so used shall be considered a separate place of business. Any articles taxed herein vended by means of any such machine shall bear stamps as evidence that the tax herein imposed has been paid and the articles taxed herein contained in such machines shall be available for inspection by the commission or its duly authorized agents at all times.

§82.24.900

Construction. The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States.

§82.32.300 Rule-Making Power of Tax Commission.

Tax commission to administer. The administration of this and chapters 82.04 through 82.28 of this title is vested in the tax commission which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The tax commission shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce their provisions, which shall have the same force and effect as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The commission may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such empolyees shall be fixed by the commission and shall be charged to the proper appropriation for the commission.

The commission shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper.

Regulations of the Washington State Tax Commission:

Washington State Tax Commission Letter Regulation of July 20, 1965:

Date: July 20, 1965

To:

Subject: Cigarette Tax on Sales to Indians

The Tax Commission has recently learned of several instances in which Indians conducting businesses upon Indian Reservations are selling cigarettes to which the State of Washington Cigarette Stamps have not been affixed. There is evidence that such unstamped cigarettes are being sold to both Indians and non-Indians.

You are hereby informed that the sale, handling or distribution of cigarettes by Washington distributors to Indians, including sales for resale on an Indian Reservation, are subject to the Cigarette Tax of 11 cents per package. Distributors and wholesalers of cigarettes will be liable for purchasing and affixing the required stamps upon all cigarettes so sold, and upon failure to do so will become liable for the penalties provided in RCW 82.24.-110, 120 and 130.

In support of this ruling, your attention is directed to RCW 82.24.080: "It is the intent and purpose of this Chapter to levy a tax on all of the articles taxed herein, sold, used, consumed, *handled, or distributed within this state and to collect the tax from the person who first*

sells, uses, consumes, *handles or distributes them in the state.*" (italics supplied)

This ruling does not affect the exemption allowed in respect to sales made directly to U. S. Government departments or agencies nor in respect to sales made in interstate or foreign commerce.

Since this matter has not been ruled on previously by the Tax Commission, the tax will be applicable prospectively from the date of this bulletin and will not apply in respect to any prior transactions.

TAX COMMISSION OF THE STATE
OF WASHINGTON